

§ 33.55

(d) A statement that reads in substance: “This is an allocation order certified for national defense use. [Insert the legal name of the person receiving the order] is required to comply with this order, in accordance with the provisions of the Transportation Priorities and Allocations System regulation (49 CFR Part 33)””; and

(e) A current copy of the Transportation Priorities and Allocations System regulation (49 CFR Part 33) as of the date of the allocation order.

§ 33.55 Mandatory acceptance of an allocation order.

(a) Except as otherwise specified in this section, a person shall accept and comply with every allocation order received.

(b) A person shall not discriminate against an allocation order in any manner such as by charging higher prices for materials, services, or facilities covered by the order or by imposing terms and conditions for contracts and orders involving allocated materials, services, or facilities that differ from the person’s terms and conditions for contracts and orders for the materials, services, or facilities prior to receiving the allocation order.

(c) If a person is unable to comply fully with the required action(s) specified in an allocation order, the person must notify the Department of Transportation immediately, explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days. Such notification does not release the person from complying with the order to the fullest extent possible, until the person is notified by the Department of Transportation that the order has been changed or cancelled.

§ 33.56 Changes or cancellations of an allocation order.

An allocation order may be changed or canceled by an official action of the Department of Transportation.

49 CFR Subtitle A (10–12 Edition)

Subpart F—Official Actions

§ 33.60 General provisions.

(a) The Department of Transportation may take specific official actions to implement the provisions of this part.

(b) These official actions include, but are not limited to, Rating Authorizations, Directives, Planning Orders, and Memoranda of Understanding.

§ 33.61 Rating authorizations.

(a) A Rating Authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item or service not normally ratable under this part; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see § 33.41.

§ 33.62 Directives.

(a) A Directive is an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each Directive issued. However, a person may not use or extend a Directive to obtain any items from a supplier, unless expressly authorized to do so in the Directive.

(c) A Priorities Directive takes precedence over all DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

(d) An Allocations Directive takes precedence over all Priorities Directives, DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

§ 33.63 Memoranda of Understanding.

(a) A Memorandum of Understanding is an official action that may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (the Department of Transportation, the Department of Commerce (if applicable), a Delegate

Agency (if applicable), the supplier, and the customer).

(b) A Memorandum of Understanding is not used to alter scheduling between rated orders, authorize the use of priority ratings, impose restrictions under this part, or take other official actions. Rather, Memoranda of Understanding are used to confirm production or shipping schedules that do not require modifications to other rated orders.

Subpart G—Compliance

§ 33.70 General provisions.

(a) The Department of Transportation may take specific official actions for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes or this part. Such actions include Administrative Subpoenas, Demands for Information, and Inspection Authorizations.

(b) Any person who places or receives a rated order or an allocation order must comply with the provisions of this part.

(c) Willful violation of the provisions of title I or Section 705 of the Defense Production Act and other applicable statutes, this part, or an official action of the Department of Transportation, is a criminal act, punishable as provided in the Defense Production Act and other applicable statutes, and as set forth in section 33.74 of this part.

§ 33.71 Audits and investigations.

(a) Audits and investigations are official actions involving the examination of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act and other applicable statutes, this part, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part.

(b) When undertaking an audit, investigation, or other inquiry, the Department of Transportation shall:

(1) Define the scope and purpose in the official action given to the person under investigation; and

(2) Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this part, the Department of Transportation may issue the following documents that constitute official actions:

(1) *Administrative Subpoenas*. An Administrative Subpoena requires a person to appear as a witness before an official designated by the Department of Transportation to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demands for Information*. A Demand for Information requires a person to furnish to a duly authorized representative of the Department of Transportation any information necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions.

(3) *Inspection Authorizations*. An Inspection Authorization requires a person to permit a duly authorized representative of the Department of Transportation to interview the person's employees or agents, to inspect books, records, documents, other writings, and information, including electronically-stored information, in the person's possession or control at the place where that person usually keeps them or otherwise, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act and related statutes, this part, or official actions.

(d) The production of books, records, documents, other writings, and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the Administrative Subpoena or Demand for Information, a